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IN THE

Supreme Court of the United States

No. 275

October Term, 1926.

BENJAMIN H. CLARK AND CHARLES RIGGS, A PARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME OF CLARK AND RIGGS,

Appellants,

vs.

GEORGE T. POOR, C. C. MARSHALL, AND FRANK B. MAULLAR, CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellees.

BRIEF OF APPELLEES.

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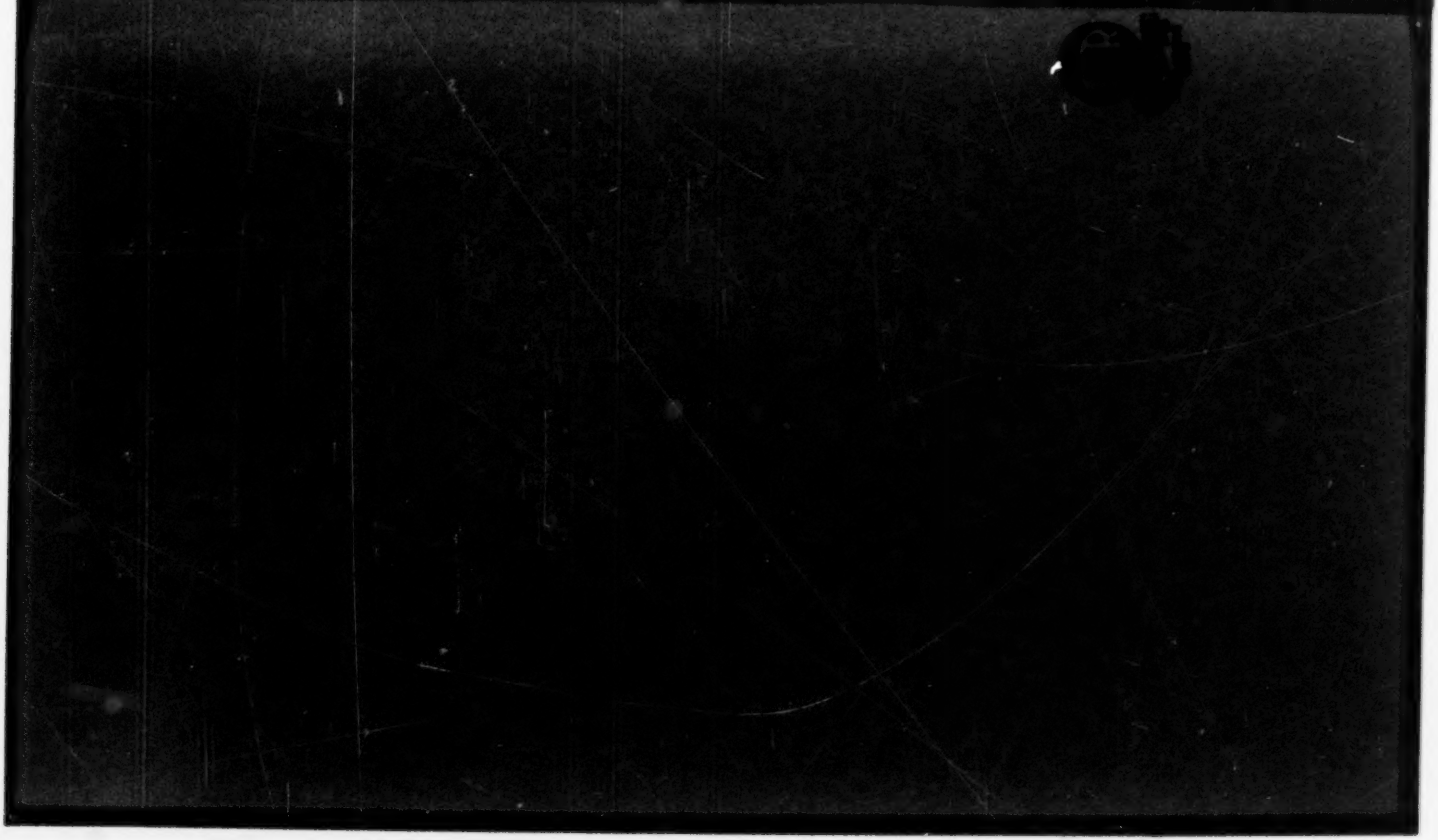

INDEX.

Outline of case 1
Statement of facts 2
Argument 4
Law 5
Equity of case 5
Conclusion 7

Citation of Authority.

General Code of Ohio, Section 614-2 2
General Code of Ohio, Section 614-84 3
Motor transportation law of Ohio, General Code, 614-84 to 102 3
General Code 614-102 4
Buck v. Kuykendall, 267 U. S., 307 4
Bush v. Maloy, 267 U. S., 317 4
Cannonball Transportation Company v. Public Utilities Commission of Ohio, 113 O. S., 565 4
Hendrick v. Maryland, 235 U. S., 610 5
Kane v. New Jersey, 242 U. S., 160 5
Royal Green Coach Company v. The Public Utilities Commission of Ohio, 110 O. S., 41 6

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Appellees.

BRIEF OF APPELLEES.

This case is before the Supreme Court on an appeal from a decree of the District Court of the United States for the Southern District of Ohio, Eastern Division, wherein the petition of the appellants was dismissed and an injunction refused.

The appellants in their petition, (R., p. 1) sought to enjoin the appellees from enforcing the motor transportation law of Ohio as against the appellants, also attempting to enjoin the appellees and any of their agents or employees from stopping, or causing to be stopped, or aiding others to stop the motor vehicles of the appellants while transporting goods in interstate commerce over the highways of Ohio, and from arresting or causing to be arrested any of the drivers or employees of the appellants or from instituting any prosecutions against the appellants or any of their employees.

In the opinion (R., p. 20) a three judge court found the appellants not entitled to the equitable relief which they sought.

STATEMENT OF FACTS.

Clark and Riggs, appellants, are a partnership admittedly hauling property as a motor transportation company (G. C. 614-2, G. C. 614-84) between Cincinnati, Ohio, and points in Indiana.

The appellees are the members of the Public Utilities Commission of Ohio charged with the administration of the motor transportation law of Ohio (R., p. 67-83).

The law provides among other things for the issuance upon application of certificates of convenience by the Public Utilities Commission of Ohio. The Public Utilities Commission has held that it has no discretion in granting a certificate to haul as a common carrier in interstate commerce but upon application and compliance with other requirements of the law must grant such

a certificate. Other provisions of the law require compliance with certain safety regulations in regard to headlights, extra tires, speedometer and adequate brakes; other sections require qualified drivers and reasonable speed limits. The Public Utilities Commission is given authority to make other safety regulations.

Clark and Riggs made no application to the Public Utilities Commission for a certificate, and did not offer to comply with the regulatory sections of the law.

The motor transportation law of Ohio also provides in Section 614-94 (R., p. 77) for a tax upon each motor vehicle used as a common carrier of persons or property, which tax, after expenses of administration of the law are paid, is used for the maintenance and repair of the highways of the state.

The appellants made no offer to pay this tax, and herein object to paying the same.

ARGUMENT.

Section 614-102 (R., p. 83) of the motor transportation law makes every section of that law independent and if any part or section is void or ineffective the remainder is enforceable. If the Public Utilities Commission of Ohio has no discretion in granting a certificate for interstate transportation, such does not invalidate the remainder of the law, particularly the tax sections. The appellees have held that they must upon application grant an interstate certificate upon application.

Buck v. Kuykendall, 267 U. S., 307.
Bush v. Maloy, 267 U. S., 317.

The Ohio commission likewise as a formal part of the administration of the valid and applicable sections of the law has granted interstate certificates.

Cannonball Transportation Co. v. The Public Utilities Commission of Ohio, 113 O. S., 565:

> Syllabus. "1. Sections 614-86 to 614-102, inclusive, of the General Code of Ohio, are designed to regulate motor transportation, governing all motor vehicles operating over the highways of the state, but do not authorize the Public Utilities Commission to exclude motor transportation companies operating in interstate traffic from such highways.
>
> "2. Motor transportation companies operating in interstate traffic are subject to the provisions of said sections and the regulations therein provided may be applied to all interstate operators, except in so far as such application would involve a direct burden upon interstate commerce.

"3. A condition in a certificate of convenience and necessity granted to an interstate operation that passengers may not be received within the state of Ohio whose destinations are also within the state of Ohio is not an unreasonable condition, and does not operate as a direct burden upon interstate commerce."

Such a reasonable procedure gives every motor transportation company operating in Ohio a number, makes a record for such company both in the files of the commission and the state treasurer to whom the tax is paid, Sec. 614-94 (R., p. 77) and who distributes the same according to the mileage in each political sub-division, Sec. 614-97 (R., p. 79).

Under no other procedure could there be any orderly administration of the law.

The tax imposed is reasonable and lawful. Appellants are making the highways of Ohio their place of business. The highways are public property, and their use as a place of business by appellants and others as common carriers subjects such highways to unusual and unreasonable wear and tear. All operators in Ohio pay this extra tax for the repair of damage done. Should any court say when congress has taken no action that placing the same tax upon a citizen of Indiana as upon a citizen of Ohio is an undue burden or an interference with interstate commerce? The tax is on the motor vehicle and its use and is not payment for the certificate.

Similar taxes when applied equitably have been sustained by this court.

Hendrick v. Maryland, 235 U. S., 610;
Kane v. New Jersey, 242 U. S., 160;

The motor transportation law of Ohio has been held constitutional.

Royal Green Coach Company v. The Public Utilities Commission of Ohio, 110 O. S., p. 41.

Appellants have an adequate remedy at law. If, as contended by Clark and Riggs, they are not subject to the provisions of the motor transportation law they, any of their drivers or employees have a defense against any charges or prosecution.

The inspectors complained of have no police power, cannot arrest or prosecute except as witnesses. Such inspectors are appointed by the director of commerce of Ohio and under his supervision. The commission speaks through orders, rules and regulations. It has made no order in regard to the appellants, taken no action of any kind or character which will affect the appellants. Until willing to comply with the valid, enforceable sections of law and the reasonable and lawful orders of the commission there is no cause for injunction against any action of the commission in enforcing the valid and applicable provisions, particularly when the commission has taken no action.

CONCLUSION.

Clark and Riggs are common carriers.

They have not applied for a certificate of convenience and necessity under the Ohio law. They have made no offer to comply with any requirement of the law.

They complain of no specific order or action of the defendant. They have an adequate remedy at law.

The matters complained of are beyond the power of the commission to remedy.

The decree of the District Court therefore should be affirmed.

Respectfully submitted,

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Of Counsel:
ALBERT M. CALLAND.